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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,638	05/03/2005	Hermann Beck	P70527US0	1795

136 7590 06/22/2007  
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WASHINGTON, DC 20004

EXAMINER
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PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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06/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/533,638

Applicant(s)

BECK, HERMANN

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/8/06</u> | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

1. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the phrases "such as, e.g., ...or the like", "a tip or front cap", "a heel or rear cap", "preferably guded", and "designed as a preformed...", in claim 2 the phrases "the tip and/or heel caps" and "being connected with each other", in claim 3 the phrases "on the one hand.." and "on the other hand...", in claim 5 the phrase "Strobel seam or by gluing or the like", in claim 9 the phrases "optionally provided..", "preferably...", and "by a seam or by gluing" are vague, indefinite, alternative, confusing, and it is not clear what positive limitations are being claimed.

In claim 10 the phrase "are connected on the side of the last" is confusing, vague, and indefinite.

In claim 11 the phrase "horizontally separated" is confusing, vague, indefinite, and not understood.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 6, 7, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hockerson (4322895).

Hockerson shows a shoe comprising an upper (22), a front cap (shown in figure 5), a heel cap 26), a sole part (30), and a wedge (32) as claimed.

4. Claims 1-7, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurrash (4580359).

Kurrash shows a shoe comprising an upper (10), a front cap (26), a heel cap (24), a sole part (34 and 36), and a wedge (38) as claimed.

5. Claims 1-7, and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (6205683).

Clark shows a shoe comprising an upper (10), a front and heel cap (shown in figure 7), a sole part (40 and 50), and a wedge (20) as claimed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (2003/0208931) in view of Clark or Kurrash.

Chen shows a shoe comprising an upper (50), a sole part (20), and a wedge (80/30) with a wedge thereon (at 91) for the upper and an insole (102) substantially as claimed except for a front cap and heel cap. Either Clark or Kurrash teaches the well known and conventional use of front and heel caps. It would have been obvious to provide a front and heel cap as taught by either Clark or Kurrash as is well known and conventional in

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the shoe of Chen to provide increase support and strength at the toe and heel portions of the shoe.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson  
Primary Examiner  
Art Unit 3728